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I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: March 2, 2010

Name: John C. Freeman, Esq.

Signature: 

PATENT  
CASE NO. 12212/39

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: )  
Raymond I. Myers )  
U.S. Patent Application ) Group Art Unit: 3769  
Serial No.: 10/750,789 )  
Filed: January 2, 2004 )  
U.S. Patent No.: 7,655,002 ) Examiner: David M. Shay  
Granted: February 2, 2010 )  
For: LENTICULAR REFRACTIVE ) Confirmation No. 1486  
SURGERY OF PRESBYOPIA, )  
OTHER REFRACTIVE ERRORS, )  
AND CATARACT RETARDATION )

REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT

MAIL STOP PATENT EXT.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It has come to our attention that there may be an error in the patent term adjustment calculated by the U.S. Patent and Trademark Office for the above-referenced patent application. Specifically, the patent term adjustment pursuant to 35 U.S.C. 154(b) of 679 days indicated on the ISSUE NOTIFICATION - Determination of Patent Term Adjustment under 35 U.S.C. 154(b)

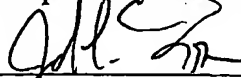
mailed on January 13, 2010 may extend the term of this patent by too few days. In particular, it is believed that the delay calculated by the Patent Office as being caused by the Patent Office is 226 days too small.

In particular, it is believed that the Patent Office has double counted a delay of 31 days regarding its delay in mailing a Notice of Allowance on May 4, 2009 in response to Applicant's Request for Continued Examination filed on December 3, 2008. This double counting is evidenced by the attached Patent Application Information Retrieval (PAIR) system's Patent Term Adjustment History that was publicly available as of March 2, 2010. It is believed that a Patent Office delay of 31 days, and not 62 days, is warranted for the late mailing of the Notice of Allowance.

The Patent Office has also failed to calculate 257 days of delay on its part due to the Patent Office's pre-Wyeth interpretation of 35 U.S.C. § 154(b)(2)(A). Applicant requests that the Patent Office recalculate the patent term adjustment in view of the Patent Office's interim procedure for patentees to request patent term adjustment recalculation that was announced on January 28, 2010. The undersigned notes that the interim procedure does not require the payment of a fee. Accordingly, no payment is being presented with this filing. If the undersigned is incorrect that no fee is required, then the undersigned requests that the appropriate fee be charged to Deposit Account No. 23-1925.

Based on the above comments, please review the calculation of the patent term adjustment and make corrections, if necessary.

Respectfully submitted,



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Dated: March 2, 2010